

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER KING, J.D. A/K/A  
KINGCAST, and JOHN NOVAK,

Plaintiffs,

v.

LIQUOR AND CANNABIS BOARD  
OF THE STATE OF WASHINGTON;  
JANE RUSHFORD, Chair of the  
Liquor and Cannabis Board; RICK  
GARZA, Director of the Liquor and  
Cannabis Board; JAY INSLEE,  
Governor of Washington; ROBERT  
FERGUSON, Washington Attorney  
General; WILLIAM P. BARR, United  
States Attorney General; and OFFICE  
OF NATIONAL DRUG CONTROL  
POLICY

In their Individual and Official  
Capacities,

Defendants.

NO. 2:20-CV-01494-RAJ

STATE DEFENDANTS'  
OPPOSITION TO REQUEST  
FOR JUDICIAL NOTICE OF  
MEDIA COVERAGE BY  
SOUTH SEATTLE EMERALD

**NOTE ON MOTION CALENDAR:**

**August 20, 2021**

**I. MOTION**

The Honorable Jay Inslee, Governor of the State of Washington; Robert Ferguson, Washington State Attorney General; the Liquor and Cannabis Board of the State of Washington; Jane Rushford, Chair of the Liquor and Cannabis Board; and Rick Garza, Director of the Liquor and Cannabis Board (collectively, the State Defendants), oppose Plaintiffs' Request for Rule 201 Judicial Notice of Media Coverage by South Seattle Emerald (Motion).

1 This article does not provide a proper basis for taking notice of the truth of the matters asserted  
 2 therein and if the Court takes judicial notice of anything it may only be the fact that the South  
 3 Seattle Emerald published this opinion piece. Consequently, State Defendants respectfully  
 4 request that the Court deny Plaintiffs' Motion.

## 6 II. ARGUMENT

### 7 A. The Court May Not Take Judicial Notice of the Truth of the Matters Asserted in 8 the South Seattle Emerald Opinion Piece.

9 Plaintiffs request that the Court take judicial notice of an article published in the South  
 10 Seattle Emerald by Luna Reyna, *Opinion: Liquor Cannabis Board Agents May Be Operating*  
 11 *Beyond Their Legal Authority*, South Seattle Emerald, August 4, 2021. (Pls.' Req. Rule 201 Jud.  
 12 Notice, ECF No. 75). Plaintiffs do not directly request that the Court take judicial notice of the  
 13 truth of the matters asserted in the opinion piece, but the tone of the Motion suggests that is what  
 14 Plaintiffs request.

15 Federal Rule of Evidence 201 permits a court to take judicial notice of a fact that is not  
 16 subject to reasonable dispute. (Fed. R. Evid. 201(b).) A fact is not subject to reasonable dispute  
 17 if it is generally known within the court's jurisdiction or can be accurately and readily determined  
 18 from accurate sources. (Fed. R. Evid. 201(b)(1), (2).) Courts may take judicial notice of  
 19 publications to "indicate what was in the public realm at the time, not whether the contents of  
 20 those articles were in fact true." *Von Saher v. Norton Simon Museum of Art at Pasadena*,  
 21 592 F.3d 954, 960 (9th Cir. 2010). Before a court may take judicial notice of the truth of the  
 22 matters contained in a newspaper article, the moving party must meet the burden of  
 23 demonstrating that the facts of the article are not subject to reasonable dispute. *Id.* at 960. Courts  
 24 may decline to take judicial notice of articles containing "opinions of the author that may  
 25  
 26

1 reasonably be questioned.” *In re American Apparel Inc. Shareholder Litigation*, 855 F. Supp. 2d,  
 2 1063 (C.D. Cal. 2012) (internal quotations and citations omitted).

3 Here, Plaintiffs request that the Court take judicial notice of facts asserted in an article  
 4 published in a local newspaper that contains the word “opinion” in the title. This article opines  
 5 that based on limited information reviewed by its author that LCB enforcement officers may be  
 6 acting outside the scope of their statutory authority. (Pls.’ Req. Jud. Notice Appendix A, ECF  
 7 No. 75). The issue of whether LCB enforcement officers are acting outside the scope of their  
 8 statutory authority is one of the subjects of the instant lawsuit and was also the subject of a  
 9 lawsuit in Pierce County Superior Court. *See John Jung v. Washington State Liquor and*  
 10 *Cannabis Board*, No. 18-2-11523-5. The fact that this topic has been the subject of litigation is  
 11 indicative that this author’s opinion “may reasonably be questioned.” *In re American Apparel*  
 12 *Inc.*, 855 F. Supp. 2d at 1063. Because the South Seattle Emerald article contains information  
 13 that is subject to reasonable dispute, it is not the proper subject of judicial notice.  
 14

15 Additionally, to the extent Plaintiffs’ Request for Judicial Notice contains anything other  
 16 than a request that the Court take notice of the fact that the South Seattle Emerald published this  
 17 article, it consists entirely of speculation that is not itself evidence and which sheds no light on  
 18 the issues before this court.  
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### 20 21 **III. CONCLUSION**

22 For these reasons, State Defendants’ request that this Court deny Plaintiffs’ Request  
 23 for Judicial Notice.  
 24  
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1 DATED this 13th day of August 2021.

2  
3 ROBERT W. FERGUSON  
Attorney General

4 s/ Michelle A. Carr  
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**CERTIFICATE OF SERVICE**

I, Michelle Carr, hereby certify that on August 13, 2021, I caused the foregoing STATE DEFENDANTS' OPPOSITION TO REQUEST FOR JUDICIAL NOTICE OF MEDIA COVERAGE BY SOUTH SEATTLE EMERALD and PROPOSED ORDER to be served upon the below listed Plaintiff by First Class United States mail, as well as an electronic copy, marked for delivery to:

JOHN NOVAK  
20126 BALLINGER WAY NE  
PMB 260  
SHORELINE, WA 98155  
JMNOVAK22@OUTLOOK.COM

Via PACER portal:

CHRISTOPHER KING  
721 E 5TH ST #B  
ARLINGTON, WA 98223

THE HONORABLE RICHARD JONES  
U.S. DISTRICT COURT W.D. WASHINGTON  
700 STEWART STREET SUITE 13128  
SEATTLE, WA 98101-9906

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 13th day of August 2021 at Olympia, WA.

/s Michelle A. Carr  
Michelle A. Carr